REMARKS

A.   GENERALLY

Applicant thanks examiner Ryan Jakovac for extending the courtesy of a telephone interview to Applicant on September 22, 2009. Applicant's summary of the interview is attached hereto.

Claims 36-57 remain in the Application. Claims 1-35 were previously canceled. Claims 36, 40, 47 and 51 have been amended. No new matter has been added.

A request for continued examination has been filed concurrently with this amendment.

B.   OBJECTIONS TO THE SPECIFICATION AND REJECTIONS UNDER 35 U.S.C. §112(2)

The Specification has been objected to and the claims rejected under 35 U.S.C. §112(2) based on a determination that the last filed amendment introduced new subject matter into the claims.

The Office Action asserts that new matter has been introduced into the application by virtue of the recitation in claims 36 and 47 of the feature "a prompt override." Applicant has amended claims 36 and 47 to more closely follow the language of the Specification, particularly as disclosed in the following paragraphs:

> [113] Figure 7A and Figure 7B flowsheets illustrate how the data gateway agent responds upon detecting a data transfer rule violation 701. Comparing data packets against data transfer settings a violation is detected 701. Automatically a notification message is transmitted to the subscriber 710 and optionally logged 702. When logged, it is desirable to also log information permitting tracking of the source of the violation and other relevant diagnostic information.

> [114] Data violations are initially separated into upstream data and downstream data 715. The subscriber is asked to allow data being sent 720 or received 730. If the data is not allowed, the data packets are discarded and the notification process ends 750.

Applicant requests that the objections to the Specification and the rejections of the claims based on the recitation of this feature be withdrawn.

The Office Action asserts that new matter has been introduced by claim 39 and 50 because of the recitation of the feature "time criteria." Applicant respectfully disagrees.

Claims 39 and 50 are at least supported by the Specification which discloses the following:

[125]   Figure 12 allows entries for a consumption based billing subscriber desiring to limit data transfers <u>by time</u>. Figure 12 includes general selections for weekday and weekend Internet use. In addition, a number of <u>special time periods are allowed to be defined</u>. The data gateway agent will first determine if the current time is within a special time period and permit or deny data transfers based upon the special entry. Next the gateway agent determines if the current time is a weekday (Monday through Friday) or a weekend (Saturday or Sunday).

[126]   Additional sophistication can be added to Figure 12. For example, selections may be added for recognizing and entering holidays that are to be treated as weekends. Also, <u>time control settings</u> can be combined with other data filtering options so that different protocols of data can be blocked or allowed during different time segments. (Specification; emphasis added by underlining.)

Paragraphs 125 and 126 disclose that the filtering rules may use time criteria to "permit or deny data transfers." Time control settings may be combined with other data filtering options "so that different protocols of data can be blocked or allowed during different time segments." One of ordinary skill would appreciate that the disclosure of "time control settings" is within the scope of "time criteria."

The Office Action asserts that new matter has been introduced by claim 40 and 51 because of the recitation of the feature "packet type criteria." Applicant has amended claims 40 and 51 to recite the feature "protocol criteria." Paragraph 126 of the Specification quoted above refers to the "different protocols of data" that can be blocked using data filter options. One of ordinary skill would also appreciate that the recited term "protocol criteria" is taught by the reference to the "different protocols of data" that can be blocked.

Applicant requests that these objections and rejections be withdrawn.

C.   CLAIM OBJECTIONS

The Office Action has objected to claims 36 and 47 because the claims use parenthetical expressions to define claim elements. Applicant respectfully submits that this practice helps to shorten the claim and makes the claim language easier to comprehend. Applicant requests that this objection be withdrawn.

D.   REJECTIONS UNDER §103(a)

Claims 36-57 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S.

Patent Application Publication 2007/0214083 filed by Jones et al. in view of U.S. Patent

7,539,748 issued to Williams (hereinafter, "Williams").

Section 103(c)(1) disqualifies certain references as prior art:

Subject matter developed by another person, which qualifies as prior art only under one
or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude
patentability under this section where the subject matter and the claimed invention were,
at the time the claimed invention was made, owned by the same person or subject to an
obligation of assignment to the same person.

MPEP § 706.02(l)I provides a number of examples to assist in interpreting the meaning

of "commonly owned" as used in Section 103(c)(1). Example 1 reads as follows:

Example 1
Parent Company owns 100% of Subsidiaries A and B
- inventions of A and B are commonly owned by the Parent Company.

The Williams patent has a filing date of May 13, 2003. It was assigned to Time Warner

Cable, a Division of Time Warner Entertainment Company, L.P. The present application has a

filing date of September, 24, 2003 and was assigned to Time Warner Cable Inc. Prior to March

31, 2003, Time Warner Cable was a Division of Time Warner Entertainment Company, L.P.

Time Warner Cable was not a separate legal entity. Rather, "Time Warner Cable" was an

assumed business name of Time Warner Entertainment Company, L.P. On March 31, 2003, as a

result of an internal restructuring, only Time Warner Cable's assets were left in Time Warner

Entertainment Company, L.P. As part of the same restructuring, on March 31, 2003, Time

Warner Cable Inc. became the parent company of all entities doing business as "Time Warner

Cable," including Time Warner Entertainment Company, L.P. Therefore, Time Warner Cable

Inc. owns Time Warner Entertainment Company, L.P.

The assignment of the Williams patent to Time Warner Cable, a Division of Time

Warner Entertainment Company, L.P. assigned ownership of the patent to Time Warner

Entertainment Company, L.P., which, as explained above, is owned by Time Warner Cable Inc.

Thus, the Williams patent has been owned by Time Warner Cable Inc. since its assignment to

Time Warner Entertainment Company, L.P.

Since the present application is also an asset of Time Warner Cable Inc., both the Williams patent and the application were, at the time the inventions set forth in the present application were made, essentially owned by the same legal entity.

Applicant respectfully submits that Williams is disqualified as a reference under §103(c)(1). The application and the Williams reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. As indicated in MPEP §§ 706.02(l)II, a statement by an attorney of record is sufficient evidence to establish common ownership. Applicant has included a statement as part of this response.

Based at least on the forgoing, Applicant requests that the rejections based on the Williams patent be withdrawn.

D.   CONCLUSION

Applicant respectfully submits that the claims as currently listed are in condition for allowance. Applicant requests that this response be entered and that the current rejections of the claims now pending in this application be withdrawn in view of the above amendments, remarks and arguments.

Respectfully submitted,

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